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ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company)	
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Petition for Expedited Approval of)	Docket No. 00-0259
Implementation of a Market-based)	
Alternative Tariff, to Become Effective)	
on or before May 1, 2000, Pursuant to)	
Article IX and Section 16-112 of the)	
Public Utilities Act)	
)	(cons.)
)	
Central Illinois Public Service Company)	
Union Electric Company)	
)	Docket No. 00-0395
Petition for Approval of Revisions to)	
Market Value Tariff, Rider MV)	
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Illinois Power Company)	
)	Docket No. 00-0461
Proposed New Rider MVI &)	
Revisions to Rider TC)	
)	

ILLINOIS POWER COMPANY'S BRIEF ON EXCEPTIONS

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Dated: January 12, 2001

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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ILLINOIS POWER COMPANY'S BRIEF ON EXCEPTIONS

Pursuant to the Hearing Examiner's Notice of December 22, 2000 and § 200.830 of the Commission's Rules of Practice, Illinois Power Company ("Illinois Power," "IPC" or "IP") hereby submits its Brief on Exceptions to the Hearing Examiner's Proposed Order ("HEPO") in the above-referenced, consolidated dockets. Pursuant to § 200.830(b)(2), IPC's replacement language for selected portions of the HEPO is attached in a separate document entitled Exceptions.

INTRODUCTION & SUMMARY

In these consolidated cases, Commonwealth Edison Company ("ComEd" or "CE"), Central Illinois Public Service Company and Union Electric Company (collectively, "Ameren") and Illinois Power each submitted proposals to replace the market values reported by the Neutral Fact-Finder ("NFF") process with market values based on indices. The HEPO approves these proposals with various modifications. In doing so, the HEPO recognizes the core facts that prompted the filings in the first place: the NFF process is flawed and the values that flow from that process are one reason competition is not taking hold as strongly as it could in Illinois.

Illinois Power is pleased that, in the main, its proposal has been found acceptable. In approving the proposal, the HEPO takes a vital step in rectifying the current, problematic situation. Unfortunately, some of the modifications proposed in the HEPO are a move in the wrong direction and may be counterproductive.

Although the remainder of this Brief focuses on places where a Final Order should improve on the HEPO, it is important at the outset to recognize the many positive areas of the HEPO and the excellent effort made by the Hearing Examiner and all parties in working through what have proven to be difficult and sometimes contentious issues. In particular, Illinois Power is pleased that it proposed, and the HEPO, adopts:

- (1) *On-peak market values* for firm energy based on into-Cinergy (rather than into-ComEd) forward contract data derived from two electronic exchanges and one published source, with IPC's proposed *Basis Adjustment* applied to the values to address any differences between into-Cinergy prices and Lower MAIN prices.
- (2) *Non-firm prices* are derived by dividing the firm values for any given month by 1.15.

(3) *Off-peak* values are derived from historical data for the day-ahead market.

(4) *Transition Charges* ("TC" or "CTC") are calculated in a manner similar to how they are calculated using the NFF values, including PJM load-shaping known as the Zuraski adjustment.

Furthermore, the HEPO encourages all parties to work on various issues for which the record to date does not provide a sufficient basis for determining if further action is warranted, and, if so, what action should be taken. From the outset of this case, IPC has attempted to work with all interested parties to craft an MVI replacement that meets the law and balances the needs of all parties. We are committed to continuing that process in the future.

All this said, the HEPO has proposed certain modifications, which as currently written, are extremely problematic for Illinois Power. We believe that, in each instance, the HEPO's proposals can be modified in a manner that still meets the concerns expressed while nonetheless forestalling a rejection of the entire package. Because the default is the NFF process, Illinois Power believes it is incumbent on it (as well as CE and Ameren) to be very clear on what modifications would make its MVI proposal unacceptable so that (1) the Commission can carefully weigh whether the modification(s) are important enough to warrant continuing with the NFF process; and (2) no party is surprised if, regrettably, the NFF remains in place due to the imposition of unwarranted modifications. We also believe that, given the serious flaws in the NFF process, it is incumbent on all parties to carefully consider if there are palatable alternatives to the HEPO's modifications. It is in this vein that we offer specific, acceptable alternatives to those parts of the HEPO that we find most objectionable.

The modifications opposed by Illinois Power are few in number but have the potential (as currently worded or as originally worded by their proponents) to cause far more problems than they solve, and in any event, are unwarranted based on the record in this case. In particular:

(1) the *sunset provision*, if retained at all, should be moved out slightly to coincide with the end of the mandatory transition period ("MTP"), which ends on January 1, 2005, and to permit initial implementation of any revisions well in advance of the summer season;

(2) the *reserve adjustment*, if retained at all, should not include any amount of double counting nor include an alternative that may adversely affect reliability; and

(3) the modification to IPC's *monthly updates* should not create customer confusion or gaming opportunities and, yet, can be re-written to also provide customer's with more decision time (if they need it) by using bi-monthly updates.

We provide language to incorporate these changes in our Exceptions. Although IPC has concerns with some other parts of the HEPO as well, with these changes to the major modifications proposed by the HEPO, IPC would find the revised MVI acceptable.

ARGUMENT

The following addresses each of the major issues listed above. Although we have less significant concerns about some of the rhetoric in the draft order, we have focused on those areas that could lead to a rejection of the MVI alternative. We reserve our right to reply to any issues raised by other parties in their exceptions.

I. The Sunset Provision is Unnecessary; If It Is Retained, It Should Be Modified.

As noted by the HEPO, several parties proposed modifying the MVI proposals so that they would cease to be effective after a year. This sunset proposal was intended to provide the

Commission with continued oversight of the tariffs in light of concerns raised by § 16-112(m). In essence, this subsection provides that, while the Commission can propose modifications to an MVI tariff, a utility cannot be obliged to accept the modifications, with the default being the NFF process. The HEPO adopts the concept of a sunset provision but lengthens the period through the May 2004 billing period, with a requirement that any utility seeking to continue its MVI after that period "file a new market value tariff on January 1, 2003." HEPO at 112.

Illinois Power opposes any extremely short sunset provision. Our concern is not with Commission oversight of our MVI but rather with the unrealistic time frames suggested by the sunset's proponents. A short sunset means that tariffs are being revised without the benefit of any meaningful opportunity for the parties to gain valuable experience with the various MVI methodologies. Furthermore, the Commission and the parties could be forced to continuously expend resources simultaneously on both an NFF process and on an MVI process. This is wasteful and should be avoided unless absolutely necessary, especially in light of many upcoming important matters (such as the residential delivery services proceedings) that will also require substantial resources by the Commission and all parties.

Such a wasteful process is not necessary for two reasons. First, IPC is committed (and has demonstrated this commitment throughout the current proceeding) to working with all interested parties to craft, and, if necessary modify, a market value replacement to the NFF. IPC has not altered this commitment. Second, if this commitment is not sufficient, the Commission retains the authority to investigate whether the MVI tariffs are no longer just and reasonable. Thereafter, and depending on the results of the investigation, the Commission could propose modifications and, if they were found unacceptable by the utility, the NFF values would be used as the default. The HEPO notes that this alternative was raised by the utilities but does not address why it is insuffi-

cient. In essence, a sunset provision requires all the same work without any showing of need for it. Unless there is a compelling reason to require this sort of work when it is possible that no modifications will be necessary after the sunset period, we continue to urge the Commission (as did the Commission's own Staff) not to adopt any sunset period.¹

Nonetheless, if the Commission decides that a sunset provision is crucial to its adoption of IPC's MVI, the provision should be modified to lengthen the period slightly so that the trigger dates are more compatible with other aspects of customer choice. In specific, we propose that the MVI tariffs cease being effective at the conclusion of the December 2004 billing period and that revised tariffs be filed no later than July 1, 2003.

The December 2004 date is more compatible with the end of the MTP (which is January 1, 2005). Furthermore, a beginning-of-the-year date means that, in the event such values become relevant again, the NFF values (which are set on a calendar year basis) would be available for the entire ensuing period rather than be used only for a stub period in 2004. On the other hand, assuming the new tariffs contain changes to the method of calculating market values and the process for updating and publishing the final values, these changes can be implemented during the relatively less active period, enabling bugs to be caught and corrected well in advance of the summer season.

With this slightly modified end date, the date for filing revised tariffs can also be moved. The July 2003 date permits the parties to gain a full year's experience with residential customers (who become eligible in May 2002) before deciding what modifications, if any, should be included

¹ Exception 1-A provides replacement language in legislative format to implement this alternative.

in the filing package. With these more compatible dates, Illinois Power would be willing to accept a sunset provision in its MVI tariff.²

II. The Reserve Adjustment Is Unwarranted As A Clear Double Count Of That Factor.

One of the upward adjustments sought by various parties was intended to reflect the value for planning reserves based on the belief that (1) the values culled from the data sources do not already reflect that factor and (2) suppliers are required to purchase planning reserves under certain utilities' FERC-based tariffs. Because CE did not purportedly require reserves to obtain transmission service, the proponents only argued for this adjustment to be made in Ameren's and IPC's cases. The HEPO adopts the modification in the form agreed to by Ameren and provides IPC with a choice: (1) do not require reserves from suppliers for them to obtain transmission service; or (2) add \$.61/MWH to the firm prices to account for planning reserves. HEPO at 120-21. The HEPO mentions (but then fails to provide any reason for rejecting) the simple point made by IPC: any adder is a double count for the value of reserves. HEPO at 82-83.

In setting MVI values, IPC starts with firm values derived from three data sources. Under-scoring the fact that the value for reserves is already included in these firm values, in setting our *non-firm energy price*, we divide the firm number by a factor of 1.15. The record indicates (and no party disputed) that this factor was set based on planning reserve issues. IP Ex. 2.1 at 8. By removing the planning reserve value from firm prices—a point no party has objected to and which the HEPO (at 122) adopts—everyone should also recognize that the firm price implicitly includes any planning reserve value and that an additional adjustment for this factor is a double count. No

² Exception 1-B provides replacement language in legislative format to implement this alternative.

party refuted this obvious double count.³ Nor does the HEPO offer any rationale for implicitly rejecting this point. Without such an explanation, we continue to believe that no reserve adjustment should be adopted.⁴

Nonetheless, and in an effort to prevent the negation of the hard work of all parties in this case, IPC is willing to accept the HEPO's flat \$.61/MWH adder to the firm values.⁵ Such a flat adder will not significantly complicate or delay the more frequent updates proposed by IPC. IPC had not realized that CILCO's illustrative example was intended to be, in fact, an across-the-board adder (as opposed to IPC having to perform a complicated calculation for each customer class and each individually-calculated customer).⁶

III. As Currently Worded, The Change To IPC's Method Of Updating Market Values Will Cause Customer Confusion And Create Gaming Opportunities.

The utilities in this proceeding offered two different methods for updating market values. Under IPC's method, market values would be updated using the following process: data are collected on the last 5 business days of the preceding month and the first 5 business days of the

³ CILCO (the main proponent of the adjustment and the only one to even acknowledge the double count issue) did not actually object to our non-firm adjustment nor did it offer any evidence demonstrating that the reason for the non-firm adjustment was anything other than what we stated. *See* HEPO at 81.

⁴ Exception 2 provides replacement language in legislative format to implement this alternative.

⁵ We cannot accept changing our FERC tariffs as suggested by the HEPO to permit financially firm contracts to have the same standing as physically firm deals in obtaining transmission. Nor do we think the Commission or FERC would want us or any party to change its tariffs in such a manner which could have obvious impacts on reliability: power & energy physically flow from actual generating sources, not from paper contracts. Transmission reliability is based, in part, on those actual flows and not on what a paper contract provides.

⁶ No replacement language is required to implement this alternative; however, Illinois Power would urge the Commission to reconsider some of its existing language in light of the concerns described in n.5 above.

current month. Once the raw data are collected: market values and associated TCs are published on IPC's website (and filed with the Commission) on the 8th Business Day of each month with those values effective for those customers who either begin delivery services during the following bill-cycle month or for those customers whose anniversaries fall during the following bill-cycle month. Once selected, however, the customer's market value and TC (except for non-market value charge changes) remain constant for the subsequent 12-month period. Thus, while a new set of values are published for the next month, they apply to the next wave of customers and do not change the values used by customers who have a different anniversary month. *See generally* IP Ex. 3.1 at 6-9.

In responding to concerns by some parties that the time frames for customers to make decisions were too short, we moved from our original publication date of the 15th day of each month to the 8th Business Day (significantly shortening the amount of time we had to perform the necessary calculations) and proposed to ensure that every customer had an opportunity to make a decision on PPO after the publication of current market values.

CE and Ameren proposed a period A/B methodology which included updates twice a year, once for a full year period effective just prior to the summer and later for a stub period which was mainly for the non-summer period.

The HEPO adopts each utility's preferred method but, in doing so, has altered IPC's by moving the effective date up one month based on a proposal made by Unicom. Under the HEPO's proposal, values published in January would be effective in March (as opposed to in February as would have been the case in IPC's proposal). HEPO at 124.

IPC continues to object to this modification because it opens the door to substantial customer confusion and to gaming opportunities. As modified, every customer will have two sets of

market values (and two sets of TCs based on those values) available to it when deciding whether to take delivery services: in continuing with the above January example, every customer calling in after those values are published, will have both February and March values available. In attempting to sort through this morass, customers will likely become confused or ask questions that have no simple answer (such as, "What is my TC if I take delivery services?"). Furthermore, with two sets of values useable at any one time, a RES could game the system by seeing which led to its economic advantage (and not necessarily the customer's) and switch the customer using those values.

These concerns about confusion and gaming are real and substantial and are new from the NFF process where only one set of values was available at any given time. Indeed, these concerns were raised not only by IPC, but also by CE (the utility affiliate of Unicom) when it discussed its concerns with Unicom's proposal. *See* CE Ex. 9 at 11.

There are also numerous other reasons for rejecting additional delay from the date of gathering data to the effective date of the ensuing market values. These have been set forth in great detail in our testimony, exhibits and briefs. The HEPO rejects them because of the limited amount of time customers will have to make a decision. While we continue to disagree with this assessment, we would be willing to accept an MVI that updates values on a bi-monthly basis. Under this proposal, IPC's updated values would be effective for those customers who either begin delivery services during the following two bill-cycle months or for those customers whose anniversaries fall during the following two bill-cycle months. For example, in December, IPC would publish values that would be effective for the bill cycle months for January and February. The next update would

be in February and would cover the bill cycle months for March and April.⁷ This revision (although not optimal from our perspective) is acceptable and has several advantages over the HEPO's modification.

First, the bi-monthly updates would keep the period from data collection to effective date shorter by a month. The importance of a shorter lag period was recognized by even Unicom.⁸ The need for it was amply demonstrated by IPC.⁹ Second, for those customers who can act in a shorter time frame, this proposal permits them to obtain recent market values sooner than if they had wait another month, as would be true under the HEPO's proposal. And, for those who need more time, every customer will have over 30 days to decide. Third, it reduces customer confusion in terms of the number of market values and TCs available at the same time. Fourth, in the same vein, it reduces gaming opportunities. Finally, it continues with the point stressed by an ARES who favored more frequent updates: market values (and resulting TCs) that include updates of the summer period "on at least a quarterly basis" are more stable. Nicor Ex. 1 at 4.

Given the added month, IPC's concessions on publishing by the 8th Business Day and altering the PPO decision window are no longer necessary since they were offered solely due to the original concerns regarding the short time from publication to effectiveness. With the additional

⁷ To keep calendar years together and to keep annual updates (for those portions of IPC's proposal that only change annually) in December, IPC proposes that its bi-monthly updates occur in February, April, June, August, October and December, with appropriate effective months following.

⁸ See Unicom Ex. 1 at 8 (increased accuracy "comes from close proximity between the sample and announcement dates").

⁹ Unicom's witness was "not sure that a one month lag would make any appreciable difference" in accuracy. Unicom Ex. 1 at 8. Yet, IPC's witnesses showed (using actual data) that, from the beginning of May through the end of May, 2000, the price for the July/August contract rose by about \$28/MWH or over 15%. IP Ex. 2.6 at 29. Notably, even the bi-monthly update process is significantly more time sensitive than either the NFF process or the Period A/B method.

month, all customers will have more than enough time to make a decision without either of the modifications.

The issue of needing more time is really only an issue when a customer initially moves to delivery services since the decision of when to go becomes important. Once the customer has chosen delivery services, its anniversary date is set and the TCs will change annually anyway on the anniversary date—knowing the new value earlier or later does not change the value or alter one's decision making process. Similarly, for PPO customers, the only real issue is whether the TC is positive or not. If it is, the decision to go PPO has presumably already been made and the rest is mechanical. If it is not, presumably the move to delivery services will await a future update that provides a positive TC—an update that will occur far sooner under IPC's method than under either the NFF or Period A/B.

This bi-monthly procedure (as described herein) imposes more risk on IPC than our initial proposal, but, in an effort to move away from the NFF process, we would be willing to accept it.¹⁰

CONCLUSION

In sum, Illinois Power's MVI proposal should be adopted by this Commission, either as modified through the evidentiary stage of this case or as suggested in this Brief. Regardless of whether a sunset provision is imposed, we will continue to work with interested parties to consider what modifications are appropriate as we all gain experience using an MVI replacement to the NFF values. Furthermore, we can accept one alternative to the reserve issue as outlined in the HEPO. Finally, although we continue to believe our original process is the fairest to all, we would be will-

¹⁰ Exception 3-B provides replacement language in legislative format to implement this alternative, while Exception 3-A provides language if the Commission decides to adopt IPC's initial proposal.

ing to accept a process that provides customers with more time to decide, if it is needed, but that also prevents customer confusion and gaming opportunities, while affording those customers who can move more quickly an opportunity to do so.

As amended, our proposal remains just and reasonable and a significant improvement over the NFF process. It also remains a pro-competitive, pro-consumer step in the right direction at a time when the electric market will be opening up to all non-residential customers.

Respectfully submitted,

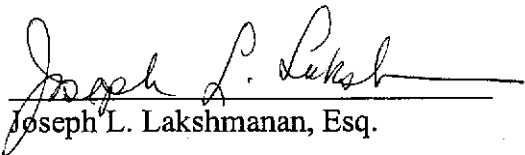
A handwritten signature in cursive script, reading "Joseph L. Lakshmanan", followed by a horizontal line.

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Dated: January 12, 2001

CERTIFICATE OF SERVICE

I, Joseph L. Lakshmanan, certify that on the 12th day of January, 2001, I served a copy of Illinois Power Company's Response to Motion for Reopening the Record & Conducting Additional Hearings, Illinois Power Company's Exceptions and Illinois Power Company's Brief on Exceptions by electronic mail and by first class mail, from Decatur, Illinois, postage prepaid to the individuals on the service list attached.


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